

**POLICY AND LEGISLATIVE RECOMMENDATIONS
CONCERNING LEGAL MARRIAGE FOR SAME
SEX INDIVIDUALS**

Seattle Commission for Sexual Minorities
March 2004



Executive Summary

Marriage offers basic protection for families in everyday life. A married couple in the United States receives 1,049 tangible legal benefits and protections from their federal government. A lesbian or gay couple in the United States receives zero benefits and protections.

When Alicia Toby-Heath needed surgery, her partner Saundra Heath-Toby took time off from work to care for her. But they had to worry about medical bills -- Alicia had no insurance and couldn't be covered under Saundra's plan since the couple wasn't married. Making matters worse, Saundra's employer wouldn't give her family leave because her relationship to Alicia is not legally recognized.

Being married often helps couples in times of emergency. Robert Daniel was on a cross-country drive with his partner Bill Flanigan when he became sick and had to be rushed to the hospital. Initially the hospital refused to allow Bill to be with Robert because they were not "family." By the time the hospital relented, Robert was in a coma. Robert died without regaining consciousness. Since the hospital would not recognize their relationship, Bill and Robert never said goodbye. Robert spent his last waking hours alone.

The Seattle Commission for Sexual Minorities (SCSM) notes three facts that characterize the current debate around legal marriage for same sex individuals, and proposes three actions for the Seattle City Council and the Mayor:

Fact: Legal and fully equal marriage is denied to Lesbian, Gay, Bisexual and Transgender (LGBT) people, nationally and locally, and many LGBT couples are suffering because of this denial.

Fact: The current climate among conservative policy makers is to support writing this discrimination into a United States Constitutional Amendment, and to actively pursue local policies of further restricting the rights of LGBT people.

Fact: *Responses to legal marriage (for same sex individuals) are developing at a rapid rate, requiring constant review of cases filed, outcomes, terminology, strategy, and new research.*

Therefore, the Seattle Commission for Sexual Minorities recommends:

1. The Seattle City Council and the Mayor's Office accept this Report as a guide for responding to legal marriage issues, and that the SCSM be charged with at least an annual review.
2. The City Council and the Mayor establish a regular meeting schedule or Report schedule with SCSM Representatives, either quarterly or as legal and social conditions require, to ensure City officials have up-to-date language and information on legal marriage issues until full marriage equality is achieved.
3. The City Council and the Mayor act in accordance with and support the Same Sex Marriage Proclamation made by Mayor Nickels on March 8, 2004.

Discussion

A. Discrimination against same sex partners

LGBT persons are denied the benefits, rights and responsibilities that the institution of marriage provides and allows for. Marriage, by its act, automatically offers 1,049 Federal benefits, rights and responsibilities, not including hundreds more offered by every state. LGBT persons have to make intentional legal provisions to enact any minimal version of these benefits, rights and responsibilities offered through marriage.

Marriage, as a legal institution, addresses basic/fundamental privileges such as the rights and benefits relating to hospital care, insurance, death, employment, finance, divorce, adoption, and children's rights that are often taken for granted.

I. The Hospital/Insurance/Death/Employment

Spouses have hospital visitation rights and can make medical decisions in event of illness or if he or she becomes incapacitated and unable to express wishes for treatment. Spouses are allowed visitation rights in a hospital intensive care unit or during restricted visiting hours in other parts of a medical facility.

Employers offer spouse sick leave, family leave to care for your spouse or one of your spouse's close relatives during an illness and bereavement leave in the event of death.

Spouses can consent to after-death examinations and procedures, as well as making burial or other funeral arrangements.

Spouses can receive wages, workers' compensation, health insurance benefits, pension and retirement plan benefits through the deceased spouse's employer.

Married couples in elderly care facilities are generally not separated unless one spouse's health dictates hospitalization or special care.

II. The Finance

Married couples are permitted to give an unlimited amount of gifts to each other without being taxed.

Married couples can receive family rates for health, homeowners', auto, and other types of insurance.

The law presumes that a married couple with both names on the title to their home owns the property as "tenants by the entirety."

Married couples, by statute, have creditor protection of their marital home.

Many married people are entitled to financial benefits relating to their spouses, such as disability, pension and social security benefits.

With marriage, a couple has the right to be treated as an economic unit and to file joint tax returns (and pay the marriage penalty), and obtain joint health, home and auto insurance policies.

When a spouse dies, ownership of every item in the household, for taxable purposes is assumed.

Without divorce, there is no uniform system for sorting out the ending of a relationship. (The dissolution of a marriage requires a determination of property distribution, award of child custody/support and spousal support.)

III. Children/Adoption Rights

The rights of the child are subject to discrimination based on the parents' sexual orientation.

Granting adoptions are left up to the discretion of a judge if there are no anti discrimination policies in place.

A child who grows up with married parents benefits from the fact that law recognizes his or her parents' relationship and receives legal protections.

Spouses are generally entitled to joint child custody and visitation upon divorce (and bear an obligation to pay child support).

Second Parent Adoption: Without second-parent adoption laws, only one adult is legally recognized as the parent and has the legal right to make decisions about a child's health, education and well-being, or is obligated to support the child. Granting adoptions are left up to the discretion of a judge if there are no anti-discrimination policies in place.

In the event the "legal parent" becomes ill or dies, the surviving partner may lose all rights to be the child's guardian, and the child is left without a legal guardian.

(As delineated by www.marriageequality.org)

B. Same sex partnerships and existing Seattle laws

There is currently an Executive Order covering the benefits allowed to all married couples that are employees of the City of Seattle. There exists no state protection for the BRR of the institution of marriage. The other symbolic recognition is limited to the Domestic Partnership Registry within the City of Seattle.

C. Protections in other jurisdictions

While statewide there exists no recognition of equality of marriage, the county has made some attempts at equalizing the insurance benefits offered through employment. Only Washington State has the authority to enact any marriage equality legislation.

We give our heartfelt thanks to both Mayor Nickels and our City Council persons for the stand and actions they have taken on behalf of same sex couples in Seattle. Thanks to the progressive actions taken by the current Mayor and the City Council, some of these recommendations have already been started or enacted. Nevertheless, current and future elected officials need to be aware of the following items, should the issue be brought up again.

Arguments

The arguments against same sex marriage fall into three categories, namely, religious intolerance, procreation (species survival), and “what will be next?”

How to respond: Keep bringing the conversation back to one of equality.

1. Religious intolerance: The rhetoric will include quoting of sacred text scripture, indication the institution of marriage is for heterosexual union. If same sex marriages are allowed to occur, this will lead to a moral bankruptcy of the nation.

Fact: The Catholic Church performed same sex marriages as recently as five hundred years ago. [BOSWELL, John. *The Marriage of Likeness: Same-Sex Unions in Pre-Modern Europe*. London: HarperCollins (1995).]

Fact: Same sex marriages have been part of life in many cultures throughout time.

Fact: In the United States, marriage is a LEGAL institution, not (by law) a religious institution. Clergy are licensed by the state to perform this service on behalf of the state.

The United States honors religious diversity. Only certain members of some religions claim a problem with same sex marriages. There are many religions in the United States, which have performed same sex marriages for years. These include denominations of the same religions as those some claim are against same sex marriage. In effect, given not all United State religious groups agree on this matter, nor do all members within religious groups even agree on the interpretations of their sacred texts, we cannot justify using religious argument as a consideration in making our decision whether to, or not to, allow same sex marriage. To do so would break the tenet of separation of church and state, and allow certain religious groups dominance over other religious groups, committing another egregious act of discrimination.

Fact: This same argument was used in the 1960's in an attempt to stop people of color marrying people who are white.

Our Declaration of Independence and part of what is great about America is our stand that “All people are created equal”. Discrimination is, in itself, an act of moral bankruptcy. Standing for equality is acting inside an ethic of liberty.

2. Procreation: Simply, this argument states that marriage is for procreation and that the institution of marriage grants a nurturing environment in which to raise children. Further, it follows that to encourage same sex behavior will lead to the downfall of the human race as we are dependant on children, as are all mammals, to continue the species.

Fact: As never before in the United States, same sex couples are having children of their own and adopting children as well.

If we accept this argument as valid, we can do no less than to grant marriage to same sex couples. And this argument is *not* valid.

Fact: There are many heterosexual unions of elderly people beyond childbearing years.

Fact: There are many couples that are biologically incapable of bearing children and many couples who are biologically capable and who have a clear intent to not have children.

Are we then to deny our elders the right to marry? Are we to deny those couples incapable or who have a commitment to remain childless the right to marry?

Fact: All species have members, who are attracted to, or have relations with their own sex.

Fact: Overpopulation is currently an international concern.

Given same sex relationships have occurred in all cultures throughout time and we have multiplied to the degree we have on the planet, this argument is absurd. The legalization of same sex marriage is simply allowing for a legal commitment to happen where there is already a relationship in place.

3. "What will same sex marriage lead to next?" This states that allowing the institutionalization of same sex marriage will lead to multiple partner marriages and people marrying animals (and cars, etc.) or children. Also, same sex marriage will lead to the degradations of heterosexual marriage.

Fact: The institution of marriage is for *persons* of marriageable age, 18 in most states.

Fact: Same sex marriage is a matter of equality. Polygamy *may become* a separate and distinct legal concern one day, no one can tell. However, multiple partner marriages are not a natural progression of same sex marriage as equality vs. discrimination would not be the issue.

Heterosexual, or opposite sex, marriage is, and shall remain a legal contract and sacred commitment. Granting equal rights to same sex partners will in no way diminish the commitment and bonds pledged by any two people in marriage.

In summation, all of the above arguments have designed within them, elements intended to invoke fear; fear of damnation, fear of the disintegration of moral fiber, fear for our children. The response to fear is to not placate it and to keep bringing the conversation

back to the realm of clarity and reasonableness. The question of same sex marriage remains a question of equality.

The Seattle Commission for Sexual Minorities has the following recommendations to the Mayor and City Council

In addition to the three general categories listed in the Executive Summary Section:

1. The Seattle City Council and the Mayor's Office accept this Report as a guide for responding to legal marriage issues, and that the SCSM be charged with at least an annual review.
2. The City Council and the Mayor establish a regular meeting schedule or Report schedule with SCSM Representatives, either quarterly or as legal and social conditions require, to ensure City officials have up-to-date language and information on legal marriage issues until full marriage equality is achieved.
3. The City Council and the Mayor act in accordance with and support the Same Sex Marriage Proclamation made by Mayor Nickels on March 8, 2004.

The Commission presents these additional recommendations:

Recognition of Relationships:

1. Create an ordinance which has city agencies and those agencies with which they interact in a fiscal manner, recognize same sex marriages, domestic partnerships, civil unions and the like as full marriages, regardless of state or country of origin. This would mean treating same sex registered couples as equally as any other married couple. This would apply to Seattle's Domestic Partnership registry as well.
2. Create the structure to see that this is followed through by City of Seattle agencies, or those agencies, which receive funds from the City of Seattle.

For example:

To ensure that same sex partners have the right to visit family members in city prisons, juvenile facilities, hospitals and care facilities run by the city.

To allow same sex partners to establish occupancy rights in Seattle Housing Authority run apartments. This would ensure that low income same sex couples could have access to subsidized housing if they need it, and would not be treated differently because of their sexual orientation.

3. The Commission advises that all City of Seattle departments and officials vigorously support the extension of relationship equality in the benefits they provide at every level of city business and operations. This would include efforts to require the provision of said benefits by all organizations, businesses, and employers within the city.

4. Partner with other cities that offer domestic partnership, civil unions or same sex marriage for a reciprocal agreement to recognize same sex marriages equally. For example, Seattle can show true leadership on a national level if Mayor Gavin Newsom in San Francisco agrees to grant the same rights to municipal employees married in Seattle and elsewhere.

Lobbying:

1. Same sex marriage need always be on the City of Seattle's lobbying agenda. When the mayor and city council regularly testify for such equality, it will continue to make the statement that the people of Seattle want equality for same sex couples, and that we do not tolerate treating people differently based on sexual orientation.

2. King County grants marriage licenses. The City of Seattle will continue to implore the County to grant them to same sex couples under the equal protection clause of the US and state constitutions.

3. Lobby for the repeal of Washington's Defense of Marriage Act and to extend the right of marriage to all couples, independent of sexual orientation.

Symbolic Proclamation:

That a proclamation stating that if Seattle were able to change relationship law, it would allow same sex couples to marry, thus ensuring an extension of the rights and responsibilities of marriage to same sex couples.

Definitions and Discussion Points

Domestic Partnership Registration: This program is a means by which unmarried couples in committed, on going family relationships, may document their relationships. This recognizes the diversity of family configurations, including lesbian, gay and unmarried heterosexual couples (and their children), and unmarried elderly partners.

Domestic Partners: This term concerns two people, both of whom are eighteen years of age or older; neither of whom is married or related by blood in a manner that would bar their marriage in Washington State; who have a relationship of mutual support, caring, and commitment; and are each other's sole domestic partner.

Civil Union: This is a union granted by states that allow legal protections, rights and responsibilities under state law only. Civil unions fall short of the benefits provided to couples under marriage laws.

Marriage:	Civil Unions:
States grant marriage licenses to couples.	States would grant civil union licenses to same sex couples but marriage licenses to opposite sex couples.
Couples have legal protections, rights, and responsibilities under state and federal law.	Couples receive legal protections, rights, and responsibilities under state law only , which are effective only when located in the state.
Couples are recognized as being married by the federal government and all state governments.	Civil unions are not recognized by other states or federal government.

NOTE: While domestic partnership benefits and civil unions have provided some concrete benefits for same sex couples, they fall short of the benefits provided to couples under marriage laws.

For a full list of definitions of sexual minority terms please contact the Seattle Commission for Sexual Minorities.

Resources

States with Rights for Same-Sex Couples

The Vermont Guide to Civil Unions

<http://www.sec.state.vt.us/otherprg/civilunions/civilunions.html>

Vermont's Secretary's of State website explaining who is eligible for Civil Unions and how to go about obtaining one.

California's Domestic Partners Registry

<http://www.ss.ca.gov/dpreistry/>

California's Secretary's of State website explaining who is eligible for domestic partnership and how to go about obtaining one.

State of Hawaii Report of the Commission on Sexual Orientation and the Law

<http://www.hawaii.gov/lrb/rpts95/sol/soldoc.html>

The official State of Hawaii report on Sexual Orientation and the law as submitted by the Commission on Sexual Orientation and the Law to the eighteenth Legislature as requested by Act 5, Session Laws of Hawaii 1995.

Marriage Project – Hawaii

<http://members.tripod.com/~MPHAWAII/>

Website chronicling events and issues related to marriages for same-sex couples in the state of Hawaii.

Massachusetts Supreme Judicial Court Opinion of the Justices to the Senate

<http://www.masslaw.com/signup/gtwFulltext.cfm?page=ma/opin/sup/1002204.htm>

Answers from the Court to the Senate of Massachusetts related to its earlier decision legalizing gay marriage and how to do so.

Massachusetts Supreme Judicial Court Opinion- GOODRIDGE, et al. v. DEPARTMENT OF PUBLIC HEALTH, et al.

<http://www.masslaw.com/signup/gtwFulltext.cfm?page=ma/opin/sup/1017603.htm>

Original Massachusetts Supreme Judicial Court Opinion legalizing marriages for same-sex couples in the state.

Countries with Rights for Same-Sex Couples

Court of Appeal for Ontario's decision legalizing marriage for same sex couples

<http://www.ontariocourts.on.ca/decisions/2003/june/halpernC39172.htm>

Legal decision from Ontario's appeal court, outlining its decision in this landmark case.

Court of Appeal for British Columbia's decision legalizing marriage for same sex couples

http://www.samesexmarriage.ca/legal/bc_case/Decision.htm

Legal decision from BC's appeal court, outlining its decision in this landmark case.

How to get Married in British Columbia

<http://www.vs.gov.bc.ca/marriage/howto.html>

British Columbia Vital Statistics Agency's website explaining how to get married in BC.

The International Lesbian and Gay Association (ILGA)

<http://www.ilga.org/default.htm>

The International Lesbian and Gay Association is a world-wide federation of national and local groups dedicated to achieving equal rights for lesbians, gay men, bisexuals and transgendered people everywhere.

Laws Related to Marriage for Same-Sex Couples

Defense of Marriage Act

<http://thomas.loc.gov/cgi-bin/query/D?c104:1:./temp/~c104AVfcgb::>

The Defense of Marriage Act (DoMA) is a law designed to establish the legal definition of marriage as a "union between one man and one woman." This definition is binding on all agencies and programs of the federal government.

GAO report on DOMA

<http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=162.140.64.21&filename=og97016.txt&directory=/diskb/wais/d ata/gao>

At least 1,049 federal laws provide benefits, rights and privileges based on marital status. This fact appears in the document "GAO/OGC-97-16 Defense of Marriage Act" — from the U.S. Congress' General Accounting Office, which is provided above by hyperlink. While claiming the Office cannot determine the exact effects of the laws on citizens, it shows that the DoMA law appears to affects an enormous range and depth of federal acknowledgements, rights, benefits and privileges.

Washington State DoMA

http://www.lmaw.org/wa_state%20DOMA.htm

Washington State's DoMA law along with a record of who voted for it.

Advocacy/Resource Organizations

Freedom to Marry

<http://www.freedomtomarry.org/>

Freedom to Marry is the gay and non-gay partnership working to win marriage equality nationwide.

National Gay and Lesbian Task Force

<http://www.nglftf.org/>

NGLTF is the national progressive organization working for the civil rights of gay, lesbian, bisexual and transgender people, with the vision and commitment to building a powerful political movement.

Gay and Lesbian Advocates and Defenders (GLAD)

<http://www.glad.org/>

(GLAD) is New England's leading legal rights organization dedicated to ending discrimination based on sexual orientation, HIV status and gender identity and expression. Providing litigation, advocacy, and educational work in all areas of gay, lesbian, bisexual and transgender civil rights and the rights of people living with HIV, GLAD has a full-time legal staff and a network of cooperating attorneys across New England

Legal Marriage Alliance of Washington (LMA)

<http://www.lmaw.org/>

LMA is a non-profit organization educating the gay, lesbian, bisexual and transgendered community and the general public on how to advance the civil right of same-sex couples to legal marriage. LMA serves as a clearinghouse for same-sex marriage information in the state of Washington. LMA offers speakers resource materials, volunteer opportunities, and a public voice for the freedom to marry.

Partners Task Force for Gay & Lesbian Couples

<http://www.buddybuddy.com/>

Partners Task Force for Gay & Lesbian Couples support the diverse community of committed gay and lesbian partners through a variety of media. Their website contains more than 200 essays, surveys, legal articles and resources on legal marriage, ceremonies, domestic partner benefits, relationship tips, parenting, and immigration.

Lambda Legal

<http://www.lambdalegal.org>

Lambda Legal is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender persons, and people impacted by HIV or AIDS through impact litigation, education, and public policy work.

Vermonters for Civil Unions

<http://www.vtcivilunionpac.org/>

Vermonters for Civil Unions is a lobbying organization dedicated to protecting the civil union law from repeal or undermining changes.

Human Rights Campaign (HRC)

<http://hrc.org/>

HRC is America's largest gay and lesbian organization that provides a national voice on gay and lesbian issues. HRC effectively lobbies Congress, mobilizes grassroots action in diverse communities, invests strategically to elect a fair-minded Congress, and increases public understanding through innovative education and communication. HRC is a bipartisan organization that works to advance equality based on sexual orientation and gender expression and identity, to ensure that gay, lesbian, bisexual and transgender Americans can be open, honest and safe at home, work and in the community.

Marriage Equality USA (MEUSA)

<http://www.marriageequality.org/>

MEUSA has a focus to end discrimination in civil marriage so that same-sex couples can enjoy the same legal and societal status as opposite-sex couples. MEUSA hopes to accomplish in the foreseeable futures what truly is the inevitable- civil marriage for same-sex couples.

The Gay & Lesbian Alliance Against Defamation (GLAAD)

<http://www.glaad.org/>

GLAAD is dedicated to promoting and ensuring fair, accurate and inclusive representation of people and events in the media as a means of eliminating homophobia and discrimination based on gender identity and sexual orientation.

DontAmend.com

<http://www.dontamend.com/>

DontAmend.com is an organization dedicated to stopping the constitutional amendment that would ban same-sex marriage.

American Civil Liberties Union (ACLU)

<http://www.aclu.org/about/aboutmain.cfm>

ACLU is our nation's guardian of liberty. We work daily in courts, legislatures and communities to defend and preserve the individual rights and liberties guaranteed to every person in this country by the Constitution and laws of the United States. Our job is to conserve America's original civic values - the Constitution and the Bill of Rights.

Contacts

Records, Elections and Licensing Service Division

<http://www.metrokc.gov/lars/marriage/>

206/296-4021

Roger Winters, President

Legal Marriage Alliance of Washington

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[National Gay and Lesbian Task Force](#)

Main Office

202/393-5177

Miscellaneous

Gay Demographics

<http://www.gaydemographics.org/>

Web site with statistics regarding gay and lesbian household across the US using data from the 2000 census. Also provides statistics for Canada, the United Kingdom, and other countries.

The Seattle Commission for Sexual Minorities extends special thanks to:

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